

HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b))

Description of the case.

W.P. No. 287 (S/B) year 2002

Hemraj Singh S/o Sri Seva Ram

Versus

State of Uttaranchal its Secretary
Uttaranchal Power Corporation Dehradun
And others

Approved for reporting.

~~Not approved for reporting~~

Date of decision. 21.11.2003

Initial of Judge

**IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL**

Writ Petition No. 287 (S/B) of 2002

Hemraj Singh S/o Sri Seva Ram
R/o Station Road Khatima
Udham Singh Nagar
Uttaranchal

... Applicant

Versus

1. State of Uttaranchal through its Secretary
Uttaranchal Power Corporation
Dehradun Uttaranchal
2. The Managing Director
Uttaranchal Power Corporation
Dehradun Uttaranchal
3. The Executive Engineer
Uttaranchal Power Corporation
Rudrapur Udham Singh Nagar
Uttaranchal
4. The Sub Division Officer
Uttaranchal Power Corporation
Khatima
District Udham Singh Nagar

... Respondents

Court No. 6

Date: 21.11.2003

Hon'ble Rajesh Tandon, J.

Rule. Respondents waive service. Heard Sri Gopal K. Verma learned counsel for the petitioner and Sri Ranjit Sexana learned counsel for the respondents. Both the parties have agreed that the matter may be finally disposed of.

By the present writ petition the petitioner has prayed for the issue of a writ order or direction in the nature of mandamus commanding the respondents to pay the retrial benefits which includes G.P.F., Leave Encashment and Gratuity with interest @ 18% from the date of retirement of the petitioner.

Brief facts giving rise to the present writ petition are that the petitioner was inducted in the service in the year 1968 as work charge and thereafter service of petitioner was confirmed on 15.11.1974 in the erstwhile Electricity Board, which is not known as Uttaranchal Power Corporation Khatima, Udham Singh Nagar.

The petitioner has stated that he had retired from the post of driver at Khatima, Udham Singh Nagar, Uttaranchal Power Corporation on 30.06.2000, since then the petitioner has not been paid retrial benefits.

According to the petitioner he has represented to the respondents with regard to the pensionary benefits including gratuity and leave encashment etc by filing a representation on 15.11.2000.

The respondents have stated in his counter affidavit in paragraph 6, the same is quoted below:-

“That the contents of para 3,4,5,6 & 7 of the writ petition are misleading. It is submitted that the land is still in occupation of the petitioner. After all khasras and khatauni’s shows that the encroachment is already there. The copy of khasra and khatauni is being filed herewith and marked as Annexure No. CA-1 to this counter affidavit the copy of report of SDM, Khatima is being filed herewith and marked as Annexure No. CA-2 to this counter affidavit.”

It appears from the record that the petitioner had already retired on 30.06.2000 and therefore, he is entitled for his pension and also other retirement benefits like gratuity, GPF etc. Sri Ranjit Saxena advocate has argued that since the petitioner has not vacated the land in question, therefore, he is not entitled for the grant of any retirement benefits.

In the case of State of **Kerala and Others Vs. M. Pdamanabhan Nair (1985) 1 Supreme Court Cases 429** is quoted below:-

Pension and gratuity are not longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment.”

In **Gorakhpur University Vs. Shitla Prasad Nagendra AIR 2001 Supreme Court 2433** of the relying upon the judgment of Apex Court in the case of **Kerala and Others Vs. M. Padmanabhan Nair (1985) 1 Supreme Court Cases 429**. The observations of the Apex Court are quoted below:-

“We have carefully considered the submissions on behalf of the respective parties before us. The earlier decision pertaining to this very University reported in 1996 (2) ESC 211 (AII) (supra) is that of a Divisional Bench rendered after considering the principles laid down and also placing reliance upon the decisions of this Court reported in (1994) 6 SCC 589 (supra) which. In turn, relied upon earlier decisions in State of Kerala V. M. Padmanabhan Nair (1985) 1 SCC 429: (AIR 1985 SC 356: 1985 Lab IC 664) and AIR 1981 SC 212 (supra). This Court has been repeatedly emphasizing the position that pension and gratuity are no longer matters of any bounty to be distributed by Government but are valuable rights acquired and property in their hands and any delay in settlement and disbursement whereof should be viewed seriously and dealt with severely by imposing penalty in the form of payment of interest. Withholding of quarters allotted, while in service, even after retirement without vacating the same has been viewed to be not a valid ground to withhold the disbursement of the terminal benefits. Such is the position without reference to amounts due towards provident fund, which is rendered immune from attachment and deduction or adjustment as against any other dues from the employee. In the context of this, mere reliance on behalf of the appellant upon yet another decisions of a different Division Bench of the very High Court rendered without taking note of any of the earlier decisions of this Court but merely proceeding to decide the issue upon equitable considerations of balancing conflicting claims of respective parties before, it does not improve the case of the appellant any further. Reliance place for the appellant University on the decision reported in 2000 Suppl (1) JT(SC) 515 (supra) does not also sound well on the facts and circumstances of this case. It is not clear from the facts relating to the said decision as to whether the person concerned was allowed to remaining occupation on receipt of the normal rent as in the present case. As noticed earlier, the case of the contesting respondent in this case is that the University authorities regularly accepted the rent at normal rates every month from the petitioner till the quarters was vacated and that in spite of request made for the allotment of the said quarters in favour of the son of the respondent, who is in the service of the University,

no decision seems to have been taken and communicated through it is now claimed in the Court proceedings that he is not entitled to this type of accommodation. Further, the facts disclosed such as the resolutions of the University resolving to waive penal rent from all Teachers as well as that of the Executive Council dated 18-7-1994 and the actual such waiver made in the case of several others cannot be easily ignored. The lethargy shown by the authorities in not taking any action according to law to enforce their right to recover possession of the quarters from the respondent or fix liability or determine the so-called penal rent from giving prior show-cause notice or any opportunity to him before ever even proceeding to recover the same from the respondent renders the claim for penal rent not only a seriously disputed or contested claim but the University cannot be allowed to recover summarily the alleged dues according to its whims in a vindictive manner by adopting different and discriminatory standards. The facts disclosed also show that it is almost one year after the vacation of the quarter and that too on the basis of certain subsequent orders increasing the rates of penal rent, the applicability of which to the respondent itself was again seriously disputed and to some extent justifiable too, the appellant cannot be held to be entitled to recover by way of adjustment such disputed sums or claims against the pension, gratuity and provident fund amounts indisputable due and unquestionable payable to the respondent before us. The claims of the University cannot be said to be in respect of an admitted or conceded claim or sum due. Therefore, we are of the view that no infirmity or illegality could not be said to be vitiated the order, under challenge in this appeal, to call for our interference, apart from the further reason that the disbursements in this case as per the decision of the High Court.”

Recently in the case of **Dr. Uma Agarwal Vs. State of U.P. (1999) 3 Supreme Court Cases 438** is reads as under:-

“We have referred in sufficient detail to the Rules and instructions which prescribe the time-schedule for the various steps to be taken in regard to the payment of pension and other retrial benefits. This we have done to remind the various governmental departments of their duties in initiating

various steps at least two years in advance of the date of retirement. If the Rules/instructions are followed strictly, much of the litigation can be avoided and retired government servants will not feel harassed because after all, grant of pension is not a bounty but a right of the government servant. The Government is obliged to follow the Rules mentioned in the earlier part of this order in letter and in spirit. Delay in settlement of retrial benefits is frustrating and must be avoided at all costs. Such delays are occurring even in regard to family pensions for which too there is a prescribed procedure. This is indeed unfortunate. In cases where a retired government servant claims interest for delayed payment, the court can certainly keep in mind the time-schedule prescribed in the Rules/instructions apart from other relevant factors applicable to each case.”

So far as the gratuity is concerned the Apex Court has also held that the petitioner is entitled for the grant of his gratuity alongwith interest.

From the perusal of the entire pleadings, it will appear that the possession of the land was not in any way part of the employment of the petitioner and as such the same cannot in any way deprive the petitioner from the grant of retirement benefits.

However, it will be open to the respondents to initiate separate proceedings for eviction of the petitioner from the land in question which shall be decided on its own merits.

Consequently, the writ petition is allowed. The respondents are directed to grant the pensionary benefits to the petitioner with interest at the rate of 10% within a period of six weeks from the filing of the certified copy of the order.

21.11.2003
ASWAL

(Rajesh Tandon, J.)